



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Barstow Field Office  
2601 Barstow Road  
Barstow, CA 92311  
[www.ca.blm.gov/barstow](http://www.ca.blm.gov/barstow)



*In Reply Refer To:*  
4160(P)  
CA-680.36

**SEP 30 2004**

CERTIFIED MAIL NO. 70041160000564822387  
RETURN RECEIPT REQUESTED

### **NOTICE OF FIELD MANAGER'S PROPOSED GRAZING DECISION**

Cathey Smith  
39686 Hinkley Road  
Hinkley, CA 92347

Dear Mrs. Smith:

#### **INTRODUCTION**

The Harper Lake Allotment, #6814, currently is an ephemeral/perennial allotment with potential forage production to enable the Bureau of Land Management (BLM) to authorize ephemeral forage and an established perennial forage allocation. Your current lease, #046814, authorizes 46 cattle year long, or 560 animal unit months (AUMs) on the Harper Lake Allotment #8004. The allotment encompasses 26,314 acres, including private, and BLM (public) lands. Public land administered by the BLM totals 17,345 acres. Within the Harper Lake Allotment, there are 12,225 acres of desert tortoise critical habitat and 5,120 acres of non-critical habitat. The Harper Lake Allotment is within the West Mojave planning area (currently out for public review).

#### **BACKGROUND**

In 2000, the grazing lease for the Harper Lake Allotment expired at the end of the 1999 grazing year (2/28/00). This grazing lease was renewed under the authority of Public Law 106-113 for a duration of three years. The duration of the grazing leases renewed in 2000 varied by allotment based on factors that included rangeland health condition. The renewed grazing leases contained the same terms and conditions as the expiring grazing leases. In 2003, the grazing lease for the Harper lake Allotment was again renewed for a period of ten years under PL 108-108. Public Law 108-108 required compliance with all applicable laws and regulations, which include the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). Following the analysis of environmental impacts this grazing leases may be approved, canceled,

suspended or modified, in whole or in part, to meet the requirements of such applicable laws and regulations.

The Washington Office Instruction Memorandum (IM) 2003-071 requires that all grazing permits and leases that expired in 1999 and 2000 be “fully processed” by the end of Fiscal Year 2004 (9/30/04). The term “fully processed” permit/lease refers to the completion of an adequate environmental analysis and issuance of a proposed grazing decision in accordance with 43 CFR 4160, and appropriate consultation in accordance with the ESA.

The Bureau of Land Management (BLM) is proposing to issue a ten-year term length grazing leases for the Harper Lake Allotment (see Map 1) to authorize cattle grazing in the jurisdiction of the Barstow Field Office. This allotment is located in rural San Bernardino County, approximately 10 miles northwest of the City of Barstow.

In September 2004 an environmental assessment (EA) CA-680-04-29 was completed to comply with IM 2003-071. This EA contains three alternatives for the renewal of this grazing lease.

As required under 43 CFR 4120.2(4)(c): BLM has provided an opportunity for public participation in the preparation of the above referenced EA. Chapters 1 and 2 of the EA have been provided to the interested public and the State of California. Copies of these chapters have also been provided to the U.S. Fish and Wildlife Service. Comments regarding this proposed action have been received from most of the parties contacted.

As required under 43 CFR 4130.2(b): BLM has consulted, cooperated, and coordinated with the interested public and the State of California concerning the renewal of this grazing lease. Comments regarding this proposed grazing lease renewal have been received from most of the parties contacted.

On January 29, 2001 the BLM and the Center for Biological Diversity et. al. enter into a stipulated agreement effective immediately, herein known as the “Settlement Agreement” for the management of livestock grazing under a federal court action. The Settlement Agreement prescribed areas of the Harper Lake be excluded from cattle grazing in the spring and fall. In addition, it placed a stocking rates threshold of 560 AUMs for this allotment. These stipulations are still in affect until the signing of the Record of Decision for the West Mojave Plan Amendment to the CDCA Plan.

#### **FINDING OF NO SIGNIFICANT IMPACT (FONSI)**

**Finding of No Significant Impact:** Environmental impacts associated with the proposed action (current management) and alternatives have been assessed. Based upon the analysis provided in the attached EA, CA-680-04-29 (available at the Barstow Field Office) I conclude that the proposed action of the Current Management Alternative will have no significant impacts on the environment under the criteria in Title 40 of Federal Regulations Subpart 1508 and is not a major federal action. Preparation of an Environmental Impact Statement pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 is not required.

This action is in conformance with existing applicable state implementation plans for the maintenance and improvement of air quality and will not cause or contribute to any new or increased violations of any air quality standards in the area. It does not exceed de minimus levels, is not regionally significant; and is exempt from conformity determination (40 CFR Part 93.153 (iii)).

### **FIELD MANAGER'S PROPOSED DECISION**

Based on the analysis conducted in EA CA-680-04-29 and the FONSI, I have concluded that the renewal of the grazing lease for the Harper Lake Allotment is appropriate. Therefore, it is my proposed decision to renew the grazing lease (#046814) for the Harper lake Allotment for a term of ten years. The terms and conditions for this authorization shall be the similar to the current grazing lease but slightly modified. The terms and conditions for this grazing lease are as follows:

The lessee shall continue to conform with the Settlement Agreement for grazing, effective January 29, 2001, as amended on April 25, 2002. This agreement excludes cattle use from portions of the allotment in the spring and fall. In addition, it placed a stocking rate threshold of 560 AUMs, as per the Field Manager's Final Decision issued September 7, 2001 (see Attachment 1). These stipulations shall remain in affect until the Record of Decision for the West Mojave Plan Amendment to the CDCA Plan is approved.

The lessee shall comply with the Area Manager's Decision dated October 2, 1981, with the Harper Lake Allotment Management Plan (AMP) dated March 15, 1984, and the Area Manager's Full Force and Effect Decision issued June 3, 1994.

The lessee shall comply with the Field Manager's Final Decision dated March 6, 1998. This grazing decision contains terms and condition from the March 25, 1997 biological opinion concerning livestock grazing in critical habitat for the desert tortoise. These terms and conditions are as follows:

- 1) Within key areas, utilization shall be limited to between 30 and 50 percent of key species. In desert tortoise habitat, utilization of key perennial grasses shall not exceed 40% from February 15 to October 14. No averaging of utilization levels among key species or key areas shall occur. When utilization approaches authorized limits in any key area, steps shall be taken to redistribute or reduce cattle or, where feasible, turning off water at troughs to reduce adjacent grazing.
- 2) Feeding of roughage, such as hay, hay cubes, or grains to supplement forage quality shall not be allowed in desert tortoise habitat.
- 3) Grazing shall be curtailed to protect perennial plants during severe or prolonged drought.
- 4) Except for shipping and animal husbandry practices, herding of cattle shall be kept to a minimum. Cattle shall be evenly dispersed throughout their use area.

- 5) In Category I and II desert tortoise habitat, perennial forage authorization above the preference level shall be made under temporary, non-renewable basis for one-month increments from March 1 through June 1 depending on the availability of perennial forage. Outside of this period and in Category III habitat, authorization may be for up to three months depending on the number of head of cattle and forage availability.
- 6) No new or replacement waters may be constructed within 1/2 mile of Category I and II habitat, unless an overall benefit to the desert tortoise would occur. Such benefit(s) will be determined by BLM and subject to concurrence with USFWS through consultation under Section 7 of the ESA.
- 7) Authorization for ephemeral forage in Category III desert tortoise habitat shall occur only when 200 pounds per acre of ephemeral forage per acre is available. Authorization for ephemeral forage in Category I and II desert tortoise habitat shall occur only when 350 pounds per acre of ephemeral forage per acre is available. Any replacement cattle authorized to use ephemeral forage shall be removed from such allotments whenever the thresholds for curtailing ephemeral grazing are reached.
- 8) Cattle carcasses found within 300 feet of any road shall be removed and disposed of in an appropriate manner.
- 9) In allotments with cattle distribution problems, utilization of key species shall not exceed 40%. These allotments currently include Pahrump Valley and Harper Lake.
- 10) A two-pasture rotational grazing system shall be implemented in the Harper Lake Allotment which will improve the condition of desert tortoise habitat in the north pasture.
- 11) Construction, operation and maintenance of range improvement activities involving surface disturbance in desert tortoise habitat shall be conducted pursuant to the guidelines, limitations, and constraints outlined in a through j listed below:
  - a) Range improvement activities shall be limited to those proposed in the "***Biological Evaluation for Cattle Grazing in the Mojave Desert in the California Desert District***" (December 1991, available in the Barstow Field Office upon request).
  - b) The construction or re-construction of range improvements shall be conducted between October 15<sup>th</sup> and March 15<sup>th</sup>, unless otherwise authorized.
  - c) Range improvement projects shall be constructed and maintained according to standard environmental guidelines. Construction activities shall occur on previously disturbed sites, whenever possible. Environmental guidelines shall require that no known desert tortoise burrows be destroyed and that the chance of of incidental or accidental take of desert tortoise is minimized.



d) Pre-construction desert tortoise surveys of proposed projects sites shall be conducted by a qualified biologist ("qualified biologist refers to a knowledgeable desert tortoise biologist, approved by BLM).

e) Motorized vehicle access to range improvements projects shall be confined to existing roads, unless otherwise authorized, and limits of all work areas shall be identified by flagging by a qualified biologist to minimize adverse impacts to desert tortoise and its habitat. All workers shall be instructed that their activities are restricted to flagged and cleared areas.

f) A field contact representative (FCR) shall be the lessee, or designated by the lessee, or a contractor who shall have the responsibility for overseeing compliance with the conditions of this decision. The FCR shall remain at the activity site during work periods and shall have the authority and responsibility to halt activities in violation of this decision.

g) Range improvement construction, operation, and maintenance shall be modified as necessary to avoid direct impacts to desert tortoise and their burrows. Potential hazards to desert tortoise that may be created, such as auger holes and trenches, shall not be left open while unattended. These hazards shall be eliminated prior to the work crew leaving the site at the end of each day.

h) If off-road use of any mechanical equipment is required to maintain or construct range improvement projects, the lessee or contractor shall notify the BLM two working days prior to initiating the work. During routine maintenance, vehicles shall be restricted to BLM approved routes of travel.

i) Surface disturbance shall be minimized, and after construction or maintenance is completed, disturbed soil shall be bladed and contoured into the surrounding terrain. Construction of new roads shall be minimized. Debris or trash created during construction and maintenance of range improvements shall be removed immediately to limit attraction of predators.

j) If desert tortoise are found above ground within areas to be disturbed by construction or maintenance of range improvements, the FCR shall be informed, activities shall cease and the Authorized Officer shall be notified. Handling of desert tortoise is prohibited except by a biologist so authorized by USFWS.

The terms and conditions of your grazing lease may be modified if additional information indicates that revision is necessary to conform with 43 CFR 4180.2(f)(1)(2)(see Attachment 2).

The lessee is required to perform normal maintenance on range improvements as per signed cooperative agreements and Section 4 permits.

The lessee is required to submit a certified Actual Use Report due 15 days after the end of authorized grazing use.

There shall be no motorized/vehicle use or changes in livestock use within the Black Mountain Wilderness Area without prior authorization from the Field Manager.

If your payment is not received within 15 days of the due date you will be charged a late fee assessment of \$25 or 10% of the grazing bill, whichever is greatest, not to exceed \$250. Failure to make payment within 30 days of the due date may result in trespass action.

The kind of livestock shall remain cattle. The permitted use for the Harper Lake Allotment shall remain at 560 AUMs. The season of use for the Harper Lake Allotment shall remain yearlong.

### RATIONALE

Based on analysis from Environmental Assessment CA-680-04-29, the current grazing use on the Harper Lake Allotment is required to remain under the grazing stipulations contained in the Settlement Agreement (2001), as amended on April 25, 2002 by court order until the Record of Decision for the West Mojave Plan Amendment to the CDCA Plan is approved. Future modifications to grazing use on the Harper Lake Allotment would occur at that time.

### AUTHORITY

The authority for this decision includes but is not limited to:

43 CFR 4120.2(4)(c): "The authorized officer shall provide opportunity for public participation in the planning and environmental analysis of proposed plans affecting the administration of grazing and shall give public notice concerning the availability of environmental documents prepared as a part of the development of such plans. The decision document following the environmental analysis shall be considered the proposed decision for the purposes of subpart 4160 of this part."

43 CFR 4130.2(a): "Grazing permits and leases shall be issued to qualified applicants to authorize use on public land and other lands under the administration of the Bureau of Land Management that are designated as available for livestock grazing through land use plans. Permits and leases shall specify the type and levels of use authorized, including livestock grazing, and suspended use. These grazing permits and leases shall also specify terms and conditions pursuant to 4130.3, 4130.3-1, and 4130.3-2.

43 CFR 4130.2(b): "The authorized officer shall consult, cooperate, and coordinate with affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public prior to the issuance or renewal of grazing permits and leases.

43 CFR 4130.2(d): "The term of grazing permits or leases authorizing livestock grazing on the public lands and other lands under the administration of the Bureau of Land Management

shall be 10 years.”

43 CFR 4130.3-1(a): “The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use, in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock grazing carrying capacity of the allotment.”

43 CFR 4130.3-1(b): “All permits and leases shall be made subject to cancellation, suspension, or modification for any violation of these regulations or any of the terms and conditions of the permit or lease.”

43 CFR 4130.3-1(c): “Permits and leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part.”

43 CFR 4130.3-2: “The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving management objectives, provide for proper range management or assist in the orderly administration of the public rangelands.”

43 CFR 4130.3-2(f): “Provision for livestock grazing temporarily to be delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of plants, provide for the improvement of riparian areas to achieve proper functioning condition or for the protection of other rangeland resources and values consistent with objectives and applicable land use plans, or to prevent compaction of wet soils, such as where delay of spring turnout is required because of weather conditions or lack of plant growth.”

#### RIGHT OF PROTEST AND/OR APPEAL

If you wish to protest this decision in accordance with 43 CFR 4160.2, you are allowed fifteen (15) days from the receipt of this notice to file a protest with the Barstow Field Manager at the above BLM Office, 2601 Barstow Road., Barstow, California 92311.

In the absence of a protest within the time allowed in accordance with 43 CFR 4160.3(a), the above proposed decision shall constitute my final decision. Should this notice become my final decision, you may appeal this grazing decision for the purpose of a hearing before an administrative law judge in accordance with the regulations contained in Title 43 CFR 4.21, 4.470 and subpart 4160.3(f). Your notice of appeal must be filed with the Barstow Field Office Manager within thirty (30) days of the receipt of this decision at the above BLM Office, 2601 Barstow Road, Barstow, CA 92311. The appeal should specify clearly and concisely why you think this decision is in error. All reasons for error not stated in the appeal shall be considered waived and may not be presented at the hearing. Any failure to meet the thirty (30) day appeal deadline will bar you from challenging this decision.

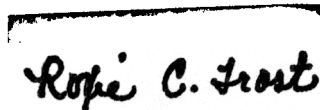
If you wish to petition for a stay of this decision during the time that your appeal is being reviewed, the petition for stay must be filed within thirty (30) days of receipt of this decision to the above BLM office. If you request a stay, you have the burden of proof to demonstrate why a stay should be granted.

Standards for Obtaining a Stay:

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) the likelihood of the appellant's success in the merits;
- (3) the likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) whether the public interest favors the granting the stay.

Sincerely,

A handwritten signature in black ink that reads "Roxie C. Trost". The signature is written in a cursive, slightly slanted style. Above the signature is a horizontal line, possibly a separator or a part of the original document's layout.

Roxie C. Trost  
Field Manager

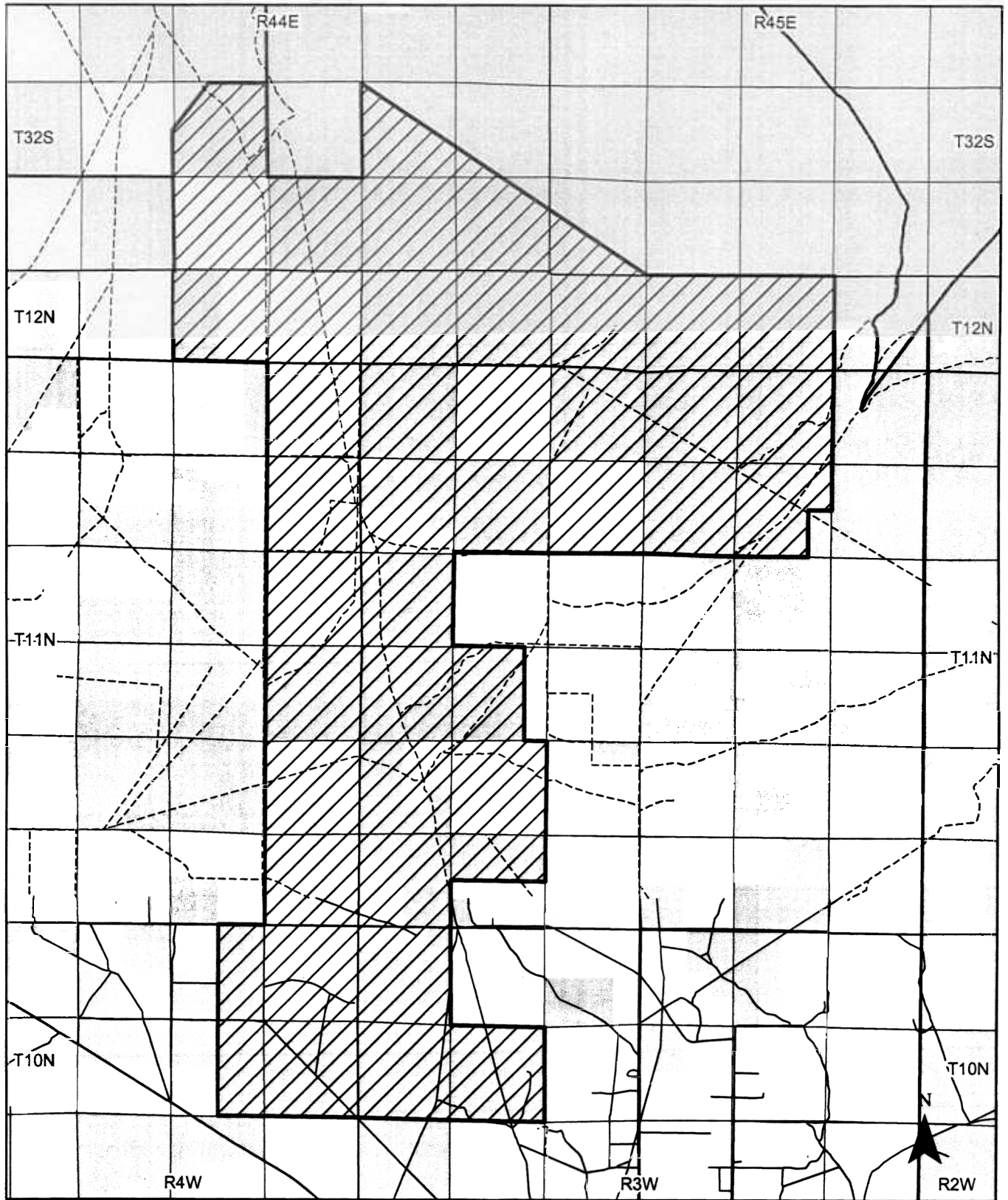
Attachments 1 & 2



Map 1

cc:

District Manager, California Desert  
Interested Public of Record  
California Dept. of Fish and Game

# Harper Lake Grazing Allotment Map 1



 Other Grazing Allotments Land Ownership  
 Harper Lake

Private

US Bureau of Land Management

Military

0 0.5 1 2  
Miles


 US Department of the Interior  
**BUREAU OF LAND MANAGEMENT**  
 Barstow Field Office  
 Barstow, California  
 (760) 252-4000  
[www.ca.blm.gov/barstow](http://www.ca.blm.gov/barstow)  
 Date Prepared: 9/30/2004  
 Project: Harper Lake



United States Department of the Interior  
BUREAU OF LAND MANAGEMENT

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BARSTOW, CA 92311  
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IN REPLY REFER TO:

4160(P)  
CA-680.36

SEP 07 2001

CERTIFIED MAIL NO. 70993220000132561949  
RETURN RECEIPT REQUESTED

R. C. [Signature]  
9/07/01

**NOTICE OF FINAL GRAZING DECISION  
EFFECTIVE IMMEDIATELY**

Mrs. Cathey Smith  
39686 Hinkley Rd.  
Hinkley, CA 92347

Dear Mrs. Smith:

**INTRODUCTION**

The Harper Lake Allotment, #08004, is an ephemeral/perennial allotment with potential forage production to enable the Bureau of Land Management (BLM) to authorize ephemeral forage and an established perennial forage allocation. Your current lease, #046814, authorizes 600 Animal Unit Months (AUM)s of forage, equivalent to 50 head of cattle year-long on the Harper Lake Allotment. The allotment encompasses 26,314 total acres, 4,712 acres of private land, and 21,602 acres of BLM land. On the BLM administered land within the allotment, there are 16,482 acres of critical habitat for the desert tortoise and 5,120 acres of desert tortoise non-critical habitat within the allotment.

This final grazing decision, effectively immediately, for the Harper Lake Allotment, modifies the terms and conditions of your grazing permit, modifies the way cattle can use the allotment to protect desert tortoise and its critical habitat, establishes the period for this modification, and sets parameters for cattle use.

This final grazing decision, effective immediately, modifies the way you livestock use this

allotment to protect the desert tortoise and its habitat, enhances forage conditions, establishes the period for this modification, and sets parameters for livestock use.

## **BACKGROUND**

In 1990 the Mojave population of the desert tortoise was listed as a threatened species under the Endangered Species Act (ESA).

On March 16, 2000, the Center for Biological Diversity, et al. (Center) filed for injunctive relief in U.S. District Court, Northern District of California (Court) against the Bureau of Land Management (BLM) to immediately prohibit all grazing activities that may affect listed species. The Center alleges the BLM was in violation of Section 7 of the Endangered Species Act (ESA) by failing to enter into formal consultation with the U.S. Fish and Wildlife Service (FWS) on the effects of adoption of the California Desert Conservation Area Plan (CDCA Plan), as amended, upon threatened and endangered species. On August 25, 2000, the BLM acknowledged through a court stipulation that activities authorized, permitted, or allowed under CDCA Plan may adversely affect threatened and endangered species, and that the BLM is required to consult with the FWS to insure that adoption and implementation of the CDCA Plan is not likely to jeopardize the continued existence of threatened and endangered species or to result in the destruction or adverse modification of critical habitat of listed species. Instead of litigating the case, the BLM entered into five stipulated agreements. On January 29, 2001, the stipulation respecting livestock grazing became effective.

Although BLM has received Biological Opinions on selected activities, including livestock grazing, consultation on the overall Plan will ensure consideration of the cumulative effects of all the activities authorized by the CDCA Plan. Until the FWS completes its analysis of the total impacts of the Plan, the impacts of individual activities such as grazing, when added together with the impacts of other activities in the desert, are not definitely known. The BLM entered into negotiations and reached agreement regarding interim actions to avoid litigation of plaintiffs' request for injunctive relief and the serious threat of an injunction prohibiting all activities authorized under the plan. These interim agreements have allowed BLM to continue to authorize activities throughout the planning area during the lengthy consultation process while providing appropriate protection to the desert tortoise and others in the short term. By taking interim actions as allowed under 43 CFR Part 4100, we will contribute to the conservation of the endangered and threatened species in accordance with 7(a) of the ESA and avoid making irreversible or irretrievable commitment of resources which would foreclose any reasonable and prudent alternatives which might be required as a result of the consultation on the CDCA plan in accordance with 7(d) of the ESA.

On April 9, 2001, you were sent the Environmental Assessment # 610-01-02 (EA) and my Notice of Proposed Decision regarding modifications of the way your cattle can use the allotments to protect desert tortoise and its critical habitat, establishment of the period for this modification, and parameters for cattle use. A timely protest of the proposed decision was received on April 24, 2001, from the Budd-Falen Law Offices, P.C. on your behalf. A final grazing decision was issued on May 15, 2001. On June 12, 2001, I received an appeal filed from

the Budd-Falen Law Offices, P.C. on your behalf. On June 15, 2001, Secretary of the Interior Gale Norton, took jurisdiction of the appeal and assigned it to Administrative Law Judge Harvey C. Sweitzer. Judge Sweitzer was directed to render a final written decision on behalf of the Department of the Interior by August 24, 2001. A hearing concerning the appealed decisions commenced on July 23, 2001 and lasted 13 days. Testimony during the hearing fully portrayed the issues under appeal and the subject of this decision.

### **Judge Sweitzer's Decision**

On August 24, 2001, BLM received Judge Sweitzer's decision (Blincoe, et. al. v. BLM, CA-690-01-01, CA-690-01-02, CA-690-01-03, CA-690-01-04, CA-680-01-03, CA-680-01-04, CA-680-01-05, CA-680-01-06, Decision, August 24, 2001). Judge Sweitzer concluded the following:

- (1) The EA and Decision Record are legally sufficient under NEPA;
- (2) The final grazing decisions are not arbitrary and capricious, are not an abuse of discretion, are supported upon a rational basis, and are otherwise in accordance with the law, except as provided in conclusion (4) below;
- (3) The final grazing decisions are consistent with section 7 of the ESA; and
- (4) BLM complied with the grazing regulations when it issued the final grazing decisions, except that BLM failed to comply with the requirement of consultation, cooperation, and coordination with the affected permittees and therefore the final grazing decisions are hereby set aside and the matters remanded to BLM for further action consistent with this Decision.

### **Additional Efforts to Engage in Consultation, Cooperation, and Coordination (CCC)**

On August 31, 2001, you and interested parties were sent a letter in accordance with Judge Sweitzer's decision and consistent with 43 CFR subparts 4110 and 4130 of the grazing regulations. That letter invited you to participate in a consultation, cooperation, and coordination (CCC) workshop on September 6 and 7, in Barstow, California. The purpose of the CCC workshop was to seek your advice and exchange views regarding implementation of the court approved stipulated agreement. In addition, BLM requested your advice and views on relevant issues and proposed management actions related to the grazing decision. Through your attorney, you indicated you were not available for the September 6 and 7 workshop but were available to meet at a later date. BLM also offered you the opportunity to submit written advice and comment. When we learned that you were not available to meet, through your attorney, we afforded you the opportunity to participate in a conference call on September 5, or 6, 2001. We did not receive advice or comments from you, nor did a conference call take place.

Beginning on August 31, 2001 the BLM also telephoned each lessee to determine whether they were available to participate in the meetings. On August 31, 2001, Barstow Field Office staff, Ms. O'Neill, phoned Mrs. Smith at home and left a message indicating that she wanted to talk



about initiating CCC for Harper Lake Allotment. Barstow Field Office Staff asked Ms. Smith to call back at her earliest convenience. Another Barstow Field Office staff member phoned Mrs. Smith on August 31, 2001, to inform her of the CCC workshop scheduled for September 6 and 7. Mrs. Smith informed Barstow Field Office staff that she was going to be out of town but thought she could make the meeting on September 6. She asked if any "real" input would occur at this meeting. On September 5, Barstow Field Office staff phoned and left a message reminding Mrs. Smith about the September 6 and 7 meeting. Mrs. Smith did not attend the September 6 or 7 meeting.

On August 31, 2001, after a number of telephone calls to counsel for lessees, the Office of the Regional Solicitor, on behalf of BLM, also wrote to the lessees' counsel informing her of the September 6 and 7 meeting dates. Counsel for lessees wrote indicating that the vast majority of the lessees were not available on September 6 or 7, but that some could meet on September 13 and 14, 2001, and raised certain issues respecting the scope of CCC. On September 5, 2001, another letter was issued by the Regional Solicitor's Office which addressed those issues raised by counsel for the lessees, and which encouraged their participation in CCC. In that same letter it was explained that BLM intended to issue decisions on September 7, 2001, which would be effective immediately based upon resource needs as documented in the grazing hearings and Judge Sweitzer's decision. This determination of imminent likelihood was based upon the extensive administrative record compiled in the grazing hearings, and upon Judge Sweitzer's decision of August 24, 2001. BLM telephoned each lessee to determine whether they were available to participate in the meetings. Some of the lessees indicated that they were available and might attend.

Staff from the California Department of Fish and Game and California State Lands Commission were contacted by my staff about issuing a final grazing decision on this allotment. We explained the need for the grazing decision and the requirement (43 CFR §4110.3-3(a) and §4130.3-3) to contact the State under these conditions. The CDFG stated they had earlier concerns about potential excess grazing use on portions of the allotment when areas are seasonally excluded from cattle use. After conveying there would be weekly field visits to the allotment, those concerns seemed alleviated. Staff from State Lands Commission appreciated the opportunity to contribute to this effort, but did not have any additional information to offer.

California District Manager Tim Salt telephoned San Bernardino County Supervisor Bill Postmus and invited him or a representative to the September 6 and 7 meeting. Tim Salt called Gerry Hillier, who had represented the County during the grazing hearings, to inform him about the scope of the September 6 and 7 workshop.

On August 31, 2001, after a series of conference calls with counsel for the Center (including the Center for Biological Diversity, PEER, and the Sierra Club), the Office of the Regional Solicitor issued a letter again inviting the Center to attend the meeting scheduled for September 6 and 7, in Barstow. Because the Center had initially stated it would not attend, it was also offered the opportunity to participate by telephone. The Center did not attend the meetings scheduled for

September 6 or 7, nor was a conference call held.

BLM was present in Barstow on September 6 and 7, in furtherance of its offer and attempt to meet with lessees, interested parties, the Center and county officials. Only County Supervisor Postmus' representative Bob Smith, and Gerry Hillier attended the meeting on September 6. BLM was ultimately informed by letter dated September 6, 2001, from lessees' counsel that none of the lessees would be able to attend those meetings.

### **FIELD MANAGER'S FINAL DECISION EFFECTIVE IMMEDIATELY**

With the above additional CCC, the analysis presented in the EA, the testimony presented and documented in Judge Sweitzer's August 24, 2001 decision, findings one, two, and three of his decision, 43 CFR 4110.3-2 (a)(b), 4110.3-3(b), 4130.3, 4130.3-3, 4140.1(b)(1)(ii)(iii), and other authorities (as described in the Authority section of this decision), it is my final decision, effective immediately in accordance with 4110.3-3(b), that livestock grazing is not authorized in the seasonal exclusion area which encompasses 16,482 acres of critical habitat for the desert tortoise. This area is shown on the enclosed map. In order to protect desert tortoise and its habitat, this decision shall modify the way your livestock use the Harper Lake Allotment by establishing the period for this modification, and setting parameters for livestock use. This area will be excluded from cattle grazing from March 1 to June 15 and from September 7 to November 7. Grazing use on the Harper Lake Allotment shall not exceed 17,033 animal (cattle) days for the year. The permitted use for this allotment shall be temporarily reduced to 560 AUMs, with a maximum stocking rate of 46 head of cattle. These modifications to grazing use on the Harper Lake Allotment shall be incorporated in to the current grazing lease as terms and conditions for grazing use as long as this decision is in effect.

If during the periods of exclusion cattle are found in the exclusion areas you will have 48 hours after notification to remove them. If they are not removed within 48 hours, trespass action according to 43 CFR §4150.2(a),(b) will be taken and an additional day will be added onto the exclusion period for every day they remain in trespass.

Applications received to graze during years of approved non-use on the Harper Lake Allotments will be denied. No temporary non-renewable grazing permits will be issued in habitat for the desert tortoise.

The seasonal exclusion will be in effect until the receipt of a Biological Opinion from the FWS that addresses the effects of grazing activities covered in the CDCA Plan on the Mojave population of the desert tortoise and the implementation of any applicable terms and conditions, reasonable and prudent alternatives, and/or reasonable and prudent measures requiring immediate implementation, or on January 31, 2002 whichever is later. The Harper Lake Allotment is not within the NEMO and NECO planning area boundaries.

### **RATIONALE**

The imminent likelihood of significant resource damage for desert tortoise and its habitat as determined by the hearing record and reflected in Judge Sweitzer's decision, caused the BLM to make this decision immediately effective to meet the fall closure date, which begins September 7. The BLM made reasonable attempts at CCC within the constraints of the immediacy of the fall grazing season and the requirement of the settlement agreement that grazing not be authorized from September 7 through November 7. Because the fall and spring closures are of critical importance to desert tortoise biology and because cattle grazing impacts desert tortoise and its habitat, BLM determined that this decision should be effectively immediately.

#### Decline of Desert Tortoise Populations

During the hearings conducted by Judge Sweitzer, July 23 through August 7, 2001, in Barstow, California, and in his August 24 decision, it became clear that continued grazing use posed an imminent likelihood of significant damage to desert tortoise and its habitat. Various desert tortoise experts testified as to the physiological needs of the desert tortoise, the deterioration and loss of its habitat, declines in various populations, and the factors which adversely affect the tortoise and its habitat. (Sweitzer Decision, 22) "The recent severe and catastrophic declines in desert tortoise populations in California signal a need for new and immediate action to reduce all sources of mortality and to stabilize populations." (Sweitzer Decision, 26)

At the hearing, all desert tortoise experts agreed that the tortoise's plight has worsened over the decade since it was listed and described findings from various surveys showing declines in tortoise throughout its range in California. The testimonies of Dr. Kristin Berry, a USGS wildlife biologist, and Edward LaRue, a BLM biologist, show a near total collapse of tortoise populations in the Mojave Desert. (Sweitzer Decision, 32)

Field work Dr. Berry supervised in spring 2001 indicated recent declines in Ivanpah Valley. She was unable to identify any moderate to high density, robust, stable or increasing California population of desert tortoises at that time. "The new declines in Fenner, Ward, and Chemehuevi valleys are new developments since 1994, when the Desert Tortoise Recovery Plan was published. Study sites exhibited population declines in the 1980's, such as Fremont Valley, the Desert Tortoise Research Natural Area, Fremont Peak, Kramer Hills, Lucerne Valley, and Johnson Valley." (Sweitzer Decision, 23) The Fremont Valley plot was resurveyed in spring 2001 and show marked declines in numbers since 1991. "Dr. Berry observed in a study plot in Chemehuevi that 'the decline between 1992 and 1999 \* \* \* was 84%'. A study plot near Goffs showed that 'in comparisons of gross numbers of registered tortoises, there has been a decline of 94-95% of the female tortoises of breeding size.' " (Sweitzer Decision, 32)

"The testimony of Mr. LaRue is equally grim". (Sweitzer Decision, 32) In 1984 there were 237 square miles of the West Mojave that were believed to support 250 tortoises or more per square mile. "By 1999 that number was down to 7 square miles. Mr. LaRue described a 'region-wide die off of tortoises [in the West Mojave] that is generally bounded by the Calico Mountains to the southeast, Goldstone to the northeast, eastern Superior Valley to the northwest, and the Mud

Hills to the southwest.’ ” (Sweitzer Decision, 32)

“Dr. Foreman observed that declines in tortoise populations have been severe in the far western Mojave, specifically the Fremont-Kramer Critical Habitat Unit and the western portion of the Superior-Cronese Critical Habitat Unit, and portions of the Chuckwalla Critical Habitat Unit. Large declines in Lucerne Valley and Johnson Valley have also occurred. Recently, sharp declines in the eastern desert, specifically Chemehuevi and Ward Valleys have been observed. Due to the small number of plots, population trends are not known everywhere. He concluded that declines are continuing in the West Mojave and southern desert and that large declines are now occurring in previously stable areas of the East Mojave.” (Sweitzer Decision, 32)

#### Affects of Livestock Grazing on Desert Tortoises

“Livestock grazing is one land use affecting tortoises. Livestock grazing has numerous direct and indirect impacts on tortoises and their habitats.” (Sweitzer Decision, 25) Impacts include “trampling of tortoises; trampling of or damage to cover sites; reduction in the thermal and canopy cover provided by shrubs; changes in composition of perennial and annual plants; creation of fragmented habitat, open spaces and cleared areas from wallows, bedding, watering, loading and unloading areas; attraction and concentration of predators (such as ravens) to livestock watering areas; crushing of tortoises on and off roads by watering trucks or other vehicles used to maintain livestock facilities and monitor livestock; reduction of key forage items available to tortoises whether through direct consumption of forage or by trampling of plants used for forage; contributions to the establishment and invasion of alien plant species; and damage to desert [microbiotic soil] crusts.” (Sweitzer Decision, 25)

Raymond Bransfield, a FWS biologist, described the effects of livestock grazing on the desert tortoise and its habitat. “A desert tortoise must consume its annual forage requirement during its active period, which can range from six weeks to five months out of the year (March to June and occasionally during September and October). If forage has not been produced or is of poor nutritive quality during this period, the opportunity for the desert tortoise to meet its nutritional needs cannot be met until the next year. Therefore, desert tortoises are highly dependent upon productive native plant communities and may be susceptible to increased mortality during poor years. Changes in perennial and native vegetation, including alteration of species composition and reduction in cover of shrubs and perennial grasses, are believed to be the result of long-term livestock grazing. The loss of cover can result in increased exposure to predators and decreased opportunities to use the shade of shrubs for thermoregulation. Native annual plants and perennial grasses are essential in meeting the nutritional needs of the desert tortoise. Nonnative plant species, such as red brome (*Bromus rubens*), filaree (*Erodium cicutarium*), and split grass (*Schismus arabicus*), have become widely established in the Mojave Desert. In some areas, these alien plants are often more common than native annual species. The disturbance of soils associated with livestock grazing likely promotes the spread of these non-native species. Abundant large herbivores can alter [microbiotic soil] crusts that are normally found in many areas of the desert and can disrupt normal germination of native species. Introduced annual

grasses remain in place after drying and create a fuel source sufficient to carry fire across large areas. Desert shrubs are not fire-adapted; therefore, once a large area has been burned, the shrubs are killed. This change further decreases the value of habitat for the desert tortoise. Because of its slow growth, the shrub component of the desert may take many decades to return to pre-fire conditions. . . Grazing animals can crush burrows and nests of desert tortoises and trample young desert tortoises. The degree and nature of impacts from cattle grazing are dependent upon the habitat type, grazing history, seasons of use, stocking rates, and density of the desert tortoise population.” (Sweitzer Decision, 30, 31)

### Seasonal Exclusion

“ The Decision Record and grazing decisions state that BLM took action in the form of the Proposed Action for several purposes: (1) to meet this § 7(a)(2) duty to ensure protection of the tortoise and its critical and non-critical habitat until BLM implements the applicable terms and conditions, reasonable and prudent alternatives, and/or reasonable prudent measures to be identified in the biological opinion to be issued by FWS, (2) to avoid making any irreversible or irretrievable commitment of resources which would foreclose any reasonable and prudent alternatives to be identified during consultation under § 7(d), and (3) to contribute to the conservation of the species pursuant to § 7(a)(1). For the reasons set forth below, this decision concludes that the terms of the grazing decisions rationally further the legitimate objective of fulfilling the mandate of § 7(a)(2), as well as the goals of 43 C.F.R. §§ 4130.3 and 4180.1(d), and therefore are supported on a rational basis and are consistent with the ESA.” (Sweitzer Decision, 81)

Based on testimony at the hearing, Judge Sweitzer found support for the seasonal closures. “Doctors Berry and Morafka also testified to the negative impacts of cattle during the period coinciding with the fall exclusion period established in the grazing decisions. In addition to potential disruption of mating activity, which is only effective from late July to early October, there are potential impacts to vulnerable neonates which hatch during the fall:

[D]uring September and October tortoise hatchlings emerge from egg nests and disperse, typically 100-1000 ft across local landscapes, eventually selecting small rodent burrows for winter hibernation. During this period, the largest number of neonate tortoises are concentrated in the smallest of areas, at a time when they themselves are both smallest and physically most vulnerable to the crushing effects of cattle hoofs. These young tortoise are not only at their smallest, but their protective shells are least calcified, and their first burrows, those abandoned by small rodents, are most easily collapsed under the impacts of cattle “traffic”. Furthermore, such losses may be rarely recorded because juvenile tortoises would be killed underground in burrows indistinguishable from those of rodents during the first several months of their occupation by tortoises.” (Sweitzer Decision, 91 & 92)

“Dr. Morafka’s testimony highlights the importance of the spring seasonal exclusion period to

juvenile tortoises, but that period is important to adult tortoises too. Doctors Berry and Morafka testified that the benefits of the spring exclusion include better access to preferred forage providing more nutrition and energy to grow and produce eggs, avoidance of trampling of cover sites and eggs, and avoidance of disruption to nesting activities.” (Sweitzer Decision, 91)

Judge Sweitzer states “...the formulation of the exclusion area boundaries was based on the goals of minimizing the impact to any one livestock operator while maximizing the acreage of critical habitat protected. This balancing of interests is an appropriate exercise of BLM’s discretion, and the location of critical habitat is certainly data upon which BLM may reasonably rely to avoid adverse impacts to tortoise habitat and thus help maintain the status quo.” (Sweitzer Decision, 94)

“Non-critical habitat was reasonably included in the exclusion areas in an attempt to apportion the “pain” and leave each permittee with some prospect of continuing operation over the short time frame of the decisions. Also, protecting non-critical habitat assists in maintaining the status quo as well. Doctors Berry and Morafka and Mr. Bransfield all testified to the value of non-critical habitat. Non-critical habitat areas may contain healthy individuals necessary for repopulation of other areas with populations that have been temporarily decimated. They may promote gene flow from one area to another. Genetically diverse populations may exist there which are important to the species’ survival.” (Sweitzer Decision, 95)

“The caps on active permitted use are also rationally related to the legitimate management objectives of maintaining the status quo and thus protecting the tortoise against potentially greater use that might have occurred under lease terms of higher permitted use. The caps were reasonably based upon the average annual active use for the last three years for which BLM had available data: 1997, 1998, and 1999. As BLM personnel testified, this determination provides a measure of stability to the Appellants with respect to their actual use, while protecting the tortoise.” (Sweitzer Decision, 96)

“The grazing decisions also provided that if, during the seasonal exclusion periods, cattle are found in the exclusion areas, an additional day will be added to the period of exclusion for every day cattle are found inside the exclusion areas and the grazing permittee will have 48 hours after notification from BLM to remove them. If they are not removed within 48 hours, BLM will initiate trespass procedures.” (Sweitzer Decision, 96)

Based on the foregoing as well as additional information found in the decision, hearing record, and testimony, Judge Sweitzer concluded these “... decisions are rationally designed to maintain, as much as possible, the status quo for the desert tortoise in accordance with § 7(a)(2) pending completion of consultation with FWS on the CDCA Plan, and to further BLM’s management objectives regarding the protection of the desert tortoise and maintenance of its habitat, while attempting to afford Appellants’ with the opportunity to continue their operations on the short term. To the extent that the decisions cause economic injury, that injury does not render the decisions unreasonable because, under statutory mandate, protection of the desert tortoise is paramount.” (Sweitzer Decision, 101).

Judge Sweitzer states: "In light of the foregoing lengthy discussion and recitation of evidence regarding the criticality of the spring and fall seasons to the tortoise and the likely effects of grazing on the tortoise during those seasons, no further discussion is warranted to justify holding the seasonal exclusion periods are supported by a rational basis." (Sweitzer Decision, 94)

Information provided in testimony during the grazing hearing regarding desert tortoise declines and livestock grazing impacts to desert tortoise and its habitat provide the immediacy for this decision. This information includes, but is not limited to, Mr. LaRue's recitation of desert tortoise declines between 1970 and 1999; Dr. Berry's information respecting significant declines in East Mojave populations; and Dr. Morofka's testimony relating to neonate and juvenile tortoise impacts from trampling by livestock.

#### Finding of No Significant Impact

I have determined that this grazing decision would not result in significant environmental impacts on the human environment; therefore, an environmental impact statement is not required. EA No. CA-610-01-02 was prepared for a prior grazing decision remanded under Judge Sweitzer's decision of August 24, 2001. BLM has reviewed that EA, along with the August 24, 2001 decision and the results of consultation, cooperation, and coordination with the affected permittee. BLM concludes that the existing information is relevant to this grazing decision and no further environmental analysis is required.

#### **AUTHORITY**

The authority for this decision includes but is not limited to:

16 U.S.C. 1536(a)(1): "All other Federal Agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of endangered and threatened species listed pursuant to section 1533 of this title."

16 U.S.C. 1536(a)(2): "Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency ... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined ... to be critical.... In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available."

16 U.S.C. 1536(d): "After initiation of consultation required under subsection (a)(2) of this section, the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2) of this

section.”

43 CFR 4100.0-5: ...Consultation, cooperation, and coordination means interaction of the purpose of obtaining advice, or exchanging opinions on issues, plans, or management actions.

43 CFR 4110.3-2 (b): “When monitoring or field observations show grazing use or patterns of use are not consistent with the provision in subpart 4180, or grazing use is otherwise causing an unacceptable level or pattern of utilization, or when the use exceeds the livestock carrying capacity as determined through monitoring, ecological site inventory or other acceptable methods, the authorized officer shall reduce the permitted grazing use or otherwise modify management practices.”

43 CFR 4110.3-3 (a): “After consultation, cooperation and coordination with the affected permittee or lessee, the State having lands or managing resources within the area, and the interested public, reductions of permitted use shall be implemented through a documented agreement or by decision of the authorized officer. Decisions implementing §4110.3-2 shall be issued as proposed decisions pursuant to §4160.1, except as provided in paragraph (b) of this section.”

43 CFR 4110.3-3 (b): “When the authorized officer determines that the soil, vegetation, or other resources on the public lands require immediate protection because of conditions such as drought, fire, flood, insect infestation, or when continued grazing use poses an imminent likelihood of significant resource damage, after consultation with, or reasonable attempt to consult with, affected permittees or lessess, the interested public, and the State having lands or responsible for managing resources within the area, the authorized officer shall close allotments or portions of allotments to grazing by any kind of livestock or modify authorized grazing use notwithstanding the provision of paragraph (a) of this section. Notices of closure and decisions requiring modification of authorize grazing use may be issued as final decisions effective upon issuance or on the date specified in the decision. Such decision shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals in accordance with 43 CFR 4.21.”

43 CFR 4130.3: “Livestock grazing permits and leases contain terms and conditions determined by the authorized officer to be appropriate to achieve management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and to ensure conformance with the provisions of subpart 4180 of this part.”

43 CFR 4140.1 (b)(1) (ii)(iii): “Persons performing the following prohibited acts related to rangelands shall be subject to civil and criminal penalties set forth at 4170.1 and 4170.2:

In violation of the terms and condition of the permit, lease, or other grazing use



authorization including, but not limited to, livestock in excess of the number authorized, or in an area or at a time different from that authorized.”

43 CFR 4150.2(a): “Whenever it appears that a violation exists and the owner of the unauthorized livestock is known, written notice of unauthorized use and order to remove livestock by a specified date shall be served upon the alleged violator or the agent of record, or both, by certified mail or personal delivery. The written notice shall also allow a specified time from receipt of notice for the alleged violator to show that there has been no violation or to make settlement under 4150.3.”

43 CFR 4150.2(b): “Whenever a violation has been determined to be non-willful and incidental the authorized officer shall notify the alleged violator that the violation must be corrected, and how it can be settled, based upon the discretion of the authorized officer.”

43 CFR 4180.1 (d): “Habitats are, or are making significant process toward being, restored or maintained for Federal threatened and endangered species, Federal Proposed Categories 1 and 2, Federal candidate and other special status species.”

## **RIGHT OF APPEAL**

This decision is effectively immediately. If you, or other individuals, believe you are adversely affected by this final decision, you may file an appeal of this grazing decision for the purpose of a hearing before an administrative law judge in accordance with 43 CFR Part 4.21, 4.470 and subpart 4160.4. You may also petition for a stay of the decision in accordance with 43 CFR 4.21, pending final determination on appeal. The appeal and petition for stay must be filed in the Barstow Field Office, 2601 Barstow Road, Barstow, CA 92311 within 30 days following receipt of the final decision.

The appeal shall state the reasons, clearly and concisely, why you think the final decision is in error. All reasons for error not stated in the appeal shall be considered as waived and may not be presented at the hearing. Any failure to meet this thirty (30) day appeal deadline will bar you from challenging this decision. If you wish to petition for stay you must include the stay petition with your appeal. You have the burden of proof to demonstrate why a stay should be granted.

### Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) the likelihood of the appellant's success on the merits;

- (3) the likelihood of immediate and irreparable harm if the stay is not granted; and
- (4) whether the public interest favors granting the stay.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Read", with a stylized flourish at the end.

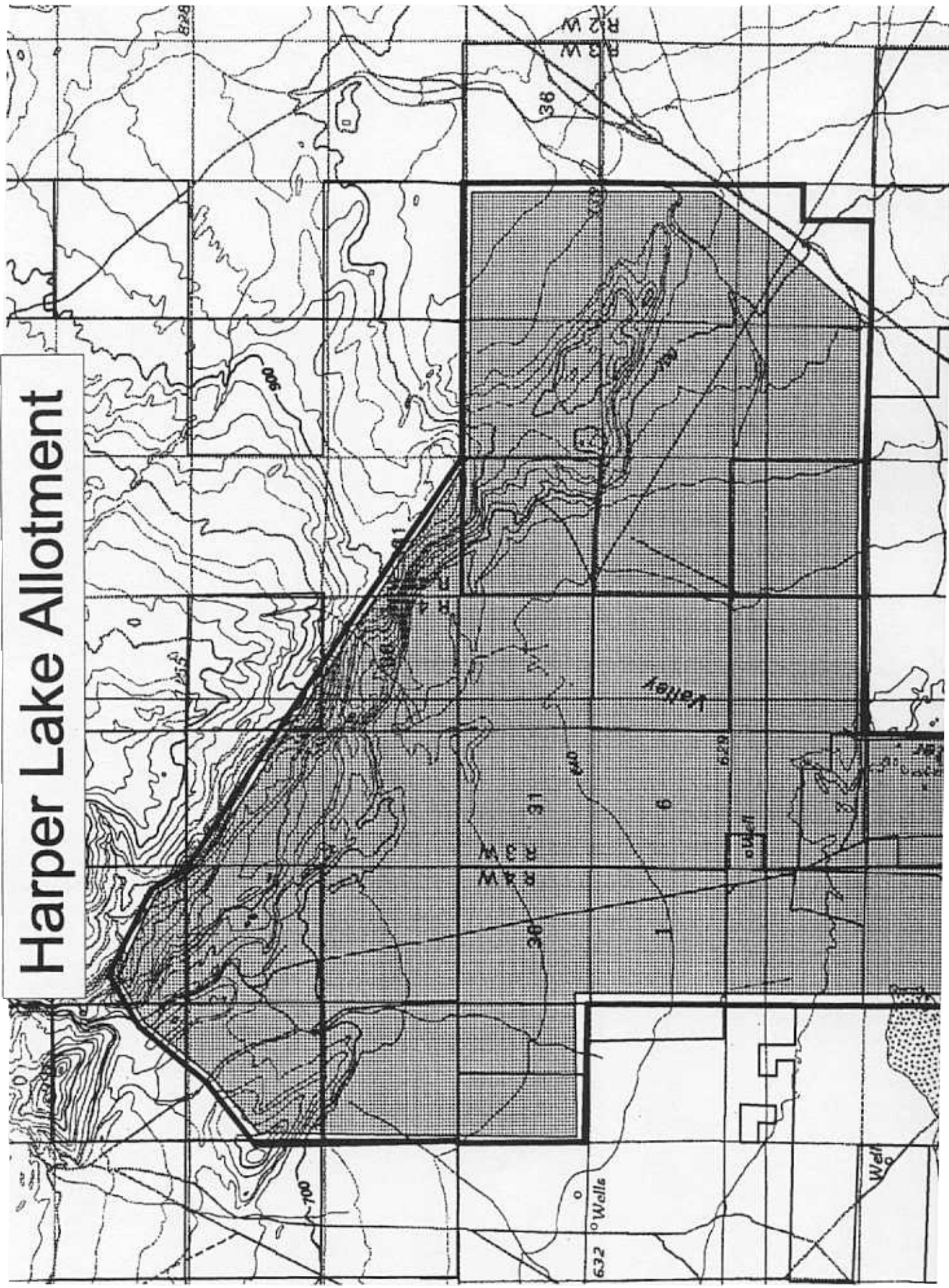
Tim Read  
Field Manager

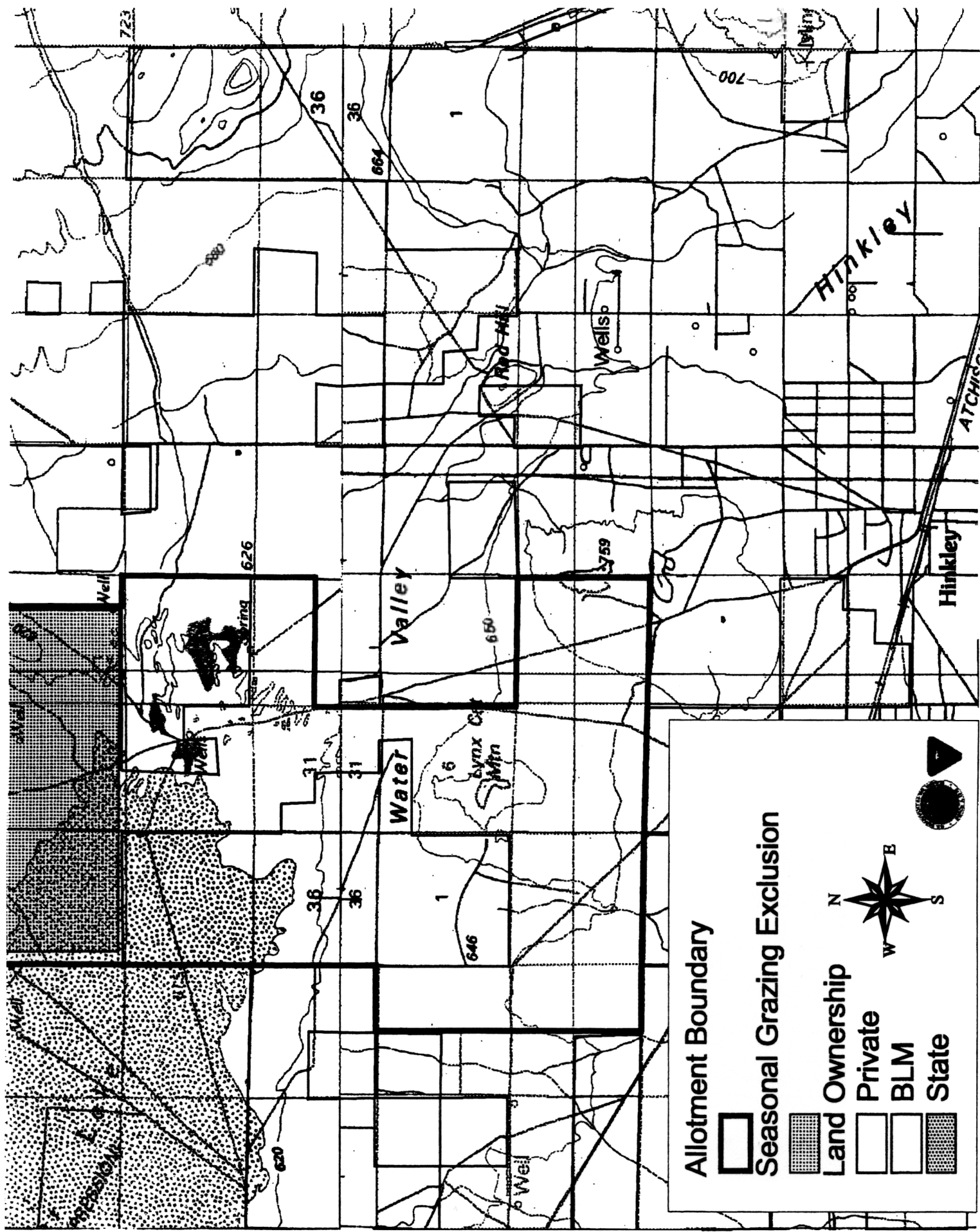
cc: Tim Salt, District Manager  
Members of Interested Public

Enclosures:

Map

# Harper Lake Allotment





**Allotment Boundary**

**Seasonal Grazing Exclusion**

**Land Ownership**

Private

BLM

State

N  
W E  
S

## ATTACHMENT 2

National Fallback Standards for grazing allotments. Fallback standards were developed to implement 43 CFR, Subpart 4180 grazing regulations. The fallback standards for rangeland health are:

1. Upland soils exhibit infiltration and permeability rates that are appropriate to soil type, climate, and landform.
2. Riparian-wetland areas are in proper functioning condition.
3. Stream-channel morphology (including but not limited to gradient, width/depth ratio, channel roughness, and sinuosity) and functions are appropriate for the climate and landform.
4. Healthy, productive and diverse populations of native species exist and are maintained.

National Fallback Guidelines for grazing management. Fallback guidelines were developed in conjunction with standards to implement 43 CFR Subpart 4180. Guidelines identify 15 grazing management practices to achieve the fallback standards.

1. Management practices maintain or promote adequate amounts of ground cover to support infiltration, maintain soil moisture, and stabilize soils.
2. Management practices maintain or promote soil conditions that support permeability rates that are appropriate to climate and soils.
3. Management practices maintain or promote sufficient residual vegetation to maintain, improve, or restore riparian-wetland functions of energy dissipation, sediment capture, groundwater recharge and stream bank stability.
4. Management practices maintain or promote stream channel morphology (e.g., gradient, width/depth ratio, channel roughness and sinuosity) and functions that are appropriate to climate and landform.
5. Management practices maintain or promote the appropriate kinds and amounts of soil organisms, plants and animals to support the hydrologic cycle, nutrient cycle, and energy flow.
6. Management practices maintain or promote the physical and biological conditions necessary to sustain native populations and communities.
7. Desired species are being allowed to complete seed dissemination in one out of every three years (Management actions will promote the opportunity for seedling establishment when climatic conditions and space allow).
8. Conservation of federally threatened or endangered and other special status species are promoted by restoration and maintenance of their habitats.
9. Native species are emphasized in the support of ecological function.
10. Non-native plant species are used only in those situations in which native species are not readily available in sufficient quantities or are incapable of maintaining or achieving properly functioning conditions and biological health.

11. Periods of rest from disturbance or livestock use during times of critical plant growth or regrowth are provided when needed to achieve healthy, properly functioning conditions (The timing and duration of use periods shall be determined by the authorized officer).
12. Continuous, season-long livestock use is allowed to occur only when it has been demonstrated to be consistent with achieving healthy, properly functioning ecosystems.
13. Facilities are located away from riparian-wetland areas wherever they conflict with achieving or maintaining riparian-wetland function.
14. Development of springs and seeps or other projects affecting water and associated resources shall be designed to protect the ecological functions and processes of those sites.
15. Grazing on designated ephemeral (annual and perennial) rangeland is allowed to occur only if reliable estimates of production have been made, the BLM has established an identified level of annual growth or residue to remain on site at the end of the grazing season, and adverse effects on perennial species are avoided.